



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :

- against - : FINAL

Detective Michael Milici : ORDER

Tax Registry No. 896556 : OF

Queens Court Section : DISMISSAL
-----X

Detective Michael Milici, Tax Registry No. 896556, Shield No. 7871, Social Security No. ending in 3031, having been served with written notice, has been tried on written Charges and Specifications numbered 2016-15664, as set forth on form P.D. 468-121, dated May 5, 2016, and after a review of the entire record, has been found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Michael Milici from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT

May 18, 2016

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In the Matter of the Charges and Specifications : Case No.
- against - : 2016-15664
Detective Michael Milici :
Tax Registry No. 896556 :
Queens Court Section :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCE:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For Respondent: Tried *in absentia*

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. Said Detective Michael Milici, while assigned to the Queens Court Section, having been ordered on April 29, 2016 to report for an official Department interview to be conducted by members of the Internal Affairs Bureau on May 3, 2016, wrongfully failed to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

2. Said Detective Michael Milici, while assigned to the Queens Court Section, while suspended from duty without pay, on or about May 4, 2016, having been ordered on April 29, 2016 to report each Monday, Wednesday, and Friday to his residence precinct, the [REDACTED] Precinct, wrongfully failed to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

P.G. 206-08, Page 2, Paragraph 13 – SUSPENSION FROM DUTY –
UNIFORMED MEMBER OF THE SERVICE DISCIPLINARY
MATTERS

REPORT AND RECOMMENDATION

The above-named member of the Department had a trial scheduled before me on May 13, 2016. The Department called Police Officer James Nilsen, Lieutenant Daniel Rogan, Deputy Inspector Leonis Pena and Deputy Inspector Michael Ricciardi as witnesses. Respondent was tried *in absentia*. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

Jurisdiction for Hearing in Absentia

This matter was conferenced in the NYPD trial room on May 10, 2016. Respondent did not appear at the conference but was represented by his attorney, Philip

Karasyk, Esq. During that conference, a trial was scheduled for May 13, 2016.¹ Mr. Karasyk advised this tribunal that he would notify Respondent of the trial date.

On May 13, 2016, Mr. Karasyk appeared in the trial room to inform the tribunal that neither he nor Respondent would be participating in the trial. Mr. Karasyk also represented on the record that he had notified Respondent of the trial date. Thereafter, Karasyk withdrew from the proceedings. (Tr. 2-3)

Additional information was adduced at trial concerning the Department Advocate's efforts to serve Respondent with the Charges and Specifications and to notify him of the hearing date. Below is a summary of the relevant testimony.

Police Officer James Nilsen of the Department Advocate's Office, Litigation Support Unit, testified regarding service of the Charges and Specifications. According to Nilsen, he and Detective Jonathan Diaz went to the 66 Precinct, which was Respondent's permanent command, the Queens Court Section, where Respondent had been assigned after being modified, and the [REDACTED] Precinct, where he was required to report every Monday, Wednesday and Friday while suspended as per Patrol Guide Section 206-08. (Tr. 9) At each command, Nilsen served a copy of the Charges and Specifications and the notification for Respondent to appear in the trial room for a conference on Tuesday May, 10, 2016. A command log entry was made indicating that the officers had been there to serve and notify Respondent. (Tr. 8-9; DX 1)

Nilsen and Diaz also visited Respondent's residence on Friday, May 6, 2016 and Saturday, May 7, 2016. On May 6, no one was present but they left a copy of the charges and specifications attached to the door. (Tr. 9-10; DX 1) On May 7, at approximately

¹ This tribunal takes judicial notice that an expedited trial date was necessitated by Respondent's anticipated retirement date of May 24, 2016. Respondent did not raise any objection as to service or this accelerated schedule.

1000 hours, Nilsen returned and encountered Respondent outside his residence. When he called Respondent by name, Respondent turned and stated, "I have nothing to say to you guys. I'm not accepting anything." According to Nilsen, Respondent further asserted, "I'm tired of you IAB guys harassing me...." When Nilsen noted he was not from Internal Affairs and was simply there to serve him with paperwork, Respondent reiterated that he would not accept anything and asked that the documents be given to his attorney, Philip Karasyk. When Respondent entered his residence, Nilsen left a copy of the Charges and Specifications and the conference notification in Respondent's mailbox. (Tr. 10-11)

Deputy Inspector Michael Ricciardi, Zone 2 Commander of IAB in Brooklyn, provided testimony concerning the Department's effort to notify Respondent of the trial date. According to Ricciardi, he sent two investigators to Respondent's residence on a daily basis to make notifications regarding the trial proceedings. He stated that on each of those days the investigators left written notifications in Respondent's mailbox. The investigators informed him that each time they returned, the prior notification had been removed from the mailbox. (Tr. 32-33, 36)

At trial Nilsen confirmed that he was assigned to notify Respondent of the May 13 trial date. (Tr. 11-12) On Wednesday May 11, Nilsen and Diaz went to Respondent's residence and knocked on the door. When no one answered, a copy of the trial notification was left attached to the door. Another attempt was made on Thursday, May 12 and again, no one answered. Accordingly, a second notification was left at Respondent's door. Nilsen noted that when he visited the residence, the documents that he had left on the prior visit had been removed. (Tr. 12)

Upon review of the record I find that the Department Advocate's efforts at service were reasonably calculated to achieve actual notice of the charges and of this proceeding. RCNY 15-03(b)(2) This finding is confirmed by Mr. Karasyk's representation that he informed Respondent of the trial date. Based on the foregoing, Respondent's Departmental disciplinary trial was conducted *in absentia*. RCNY 15-03(d)

Specifications 1 and 2

Respondent is charged with failing to comply with an April 29, 2016 order to report for an official Department interview which was to be held pursuant to Patrol Guide Procedure 206-13 and which was scheduled for May 3, 2016. He is also charged with failing to obey an April 29, 2016 order to report to the 122 Precinct on each Monday, Wednesday and Friday during his suspension. To prevail in this matter, the Department Advocate must prove by a preponderance of the credible evidence that both orders were communicated to Respondent, that the orders were clear and unambiguous and that Respondent failed to obey them. Based on this record, I find that the Department Advocate satisfied its burden of proof.

The following is a summary of the testimony presented at trial. Lieutenant Daniel Rogan, the [REDACTED] Precinct Integrity Control Officer, testified that he notified Respondent of the days he was required to report to the [REDACTED] Precinct during his suspension and of the scheduled time and place of his official Department interview. Specifically, Rogan recounted that on April 29, 2016, he received a phone call from Sergeant Kocher of IAB, Group 1, asking when Respondent was scheduled to report to the [REDACTED] Precinct. Rogan informed Kocher that Respondent was not required to report to the precinct because he had signed a waiver. Kocher told Rogan to notify Respondent that his waiver had been

revoked and that an official Department interview had been scheduled for May 3, 2016, as part of an investigation. (Tr. 14-16)

Rogan prepared a written notification for Respondent indicating that he was required to appear with his attorney at 315 Hudson Street in Manhattan on Tuesday May 3, 2016, at 1200 hours. Rogan also called Respondent on his personal phone and informed him that his reporting waiver had been rescinded and that he was now required to report to the [REDACTED] Precinct on Mondays, Wednesdays and Fridays. Respondent was also instructed to come in immediately to receive the written notification. (Tr. 16-18) Respondent appeared at the precinct within the hour and met with Rogan. Rogan reiterated Respondent's reporting requirements and asked him to sign for his written notification of the May 3 Department interview. (Tr. 18-20) He recalled Respondent saying "Okay" and signing the notice in his presence and left. (Tr. 19; DX 2) Rogan then directed the desk officer to document the notification in the command log. (Tr. 20-21; DX 3)

Approximately an hour later, Rogan was directed to notify Respondent that only the location of Respondent's Department interview had been changed. (Tr. 22-23) Rogan made two calls to Respondent's personal phone, leaving a voicemail on the second attempt indicating that Respondent should call him immediately. He then sent his patrol sergeant to Respondent's residence to make a personal notification of the venue change, but she was not successful in doing so. (Tr. 23-24) Later that day, Rogan received a phone call from Respondent's number from an individual who identified himself as Philip Karasyk, Respondent's attorney. Rogan explained the change in location and confirmed the date and time. (Tr. 24-25)

As to the reporting requirement, Rogan testified that the [REDACTED] command log noted that Respondent had reported, as required, at 1115 hours on Monday, May 2, 2016. Rogan was further advised, however, that Respondent did not appear on Wednesday, May 4 or any required date thereafter. (Tr. 25-26) At trial, Ricciardi, also confirmed that Respondent failed to comply with the order to report to the [REDACTED] Precinct as directed on and after Wednesday, May 4, 2016. (Tr. 35-36)

Deputy Inspector Leonis Pena, Commanding Officer of IAB Group 33, and Ricciardi provided testimony as to what transpired on the date of the scheduled interview. Pena testified that at 1045 hours on the date of the interview, Ricciardi directed him to again notify Respondent of the time and location of the Department interview. (Tr. 28) Pena testified that he arrived at Respondent's residence at approximately 1130 hours. After ringing the doorbell a female answered through an intercom that Respondent was not home. Pena asked if she was [REDACTED]' Respondent's wife, and she confirmed that she was. (Tr. 30) Pena asked if Respondent was driving, if she knew when he would be back and if she could contact him. He recalled Respondent's wife indicating that he was not driving, that he did not have his phone and that she did not know when he would return. (Tr. 29-30)

Pena then asked if Respondent was on his way to the interview. [REDACTED] responded that she knew nothing about an interview and asked if Respondent's lawyer had called Pena's office. Pena again inquired about Respondent's whereabouts but she reiterated that she did not know and that he should leave his "information." Pena complied and left a note directing that Respondent call him "ASAP." He left the note in

the mailbox as Respondent's wife refused to open the door to accept it. Pena noted that Respondent never called him as directed. (Tr. 31)

Ricciardi was tasked with conducting Respondent's Departmental interview. (Tr. 33-34) When Respondent did not appear at the scheduled time, he called Respondent's attorney, Mr. Karasyk, and left a message with his secretary. He testified that Karasyk called him back and stated that it was not in Respondent's best interest to answer questions and that he would not appear for a Department interview. (Tr. 35) Ricciardi also contacted Sergeant John Fallon, who worked at the Manhattan IAB location, and confirmed that Respondent had not reported to the original venue. (Tr. 35)

The uncontested evidence presented at trial supports a finding that on April 29, 2016, Respondent received clear and unambiguous orders to appear at the official Department interview scheduled for May 3, 2016,² and to report to the [REDACTED] Precinct on designated days during his suspension in compliance with Patrol Guide Section 206-08. At issue here is whether Respondent's failure to comply with both orders constitutes misconduct. I find that it does.

Patrol Guide Section 203-03, page 1, para 2, specifically requires that members of service, "Obey lawful orders and instructions of supervising officers." It is a basic tenet of public employment law that employees are generally required to "obey now, grieve later." Exceptions to this principle are very limited. For example, an employee need not obey an unlawful order, an order that is beyond the scope of a supervisor's authority, or an order that poses an imminent threat to health or safety. *See Ferreri v. NY State Thruway Authority*, 62 N.Y.2d 855 (1984); *Reisig v. Kirby*, 62 Misc.2d 632 (Sup. Ct.

² Although the venue of the official Department interview was changed, the undisputed evidence is that Lieutenant Rogan spoke to Respondent's attorney personally and informed him of the new location. On the day of the interview, the original location was also contacted and it was confirmed that Respondent did not appear at the original location. Thus, the venue change has no impact on this tribunal's findings.

Suffolk County 1968), aff'd, 31 A.D.2d 1008 (2d Dep't 1969). None of these exceptions apply in this case. Accordingly, Respondent is found guilty of the charged misconduct.

PENALTY RECOMMENDATIONS

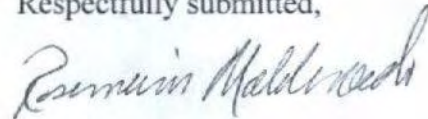
In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on April 25, 1990. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of failing to comply with two lawful orders pursuant to Patrol Guide section 203-03. First, Respondent failed to report for an official Department interview on May 3, 2016. Second, beginning on May 4, 2016, Respondent failed to report to his resident precinct each Monday, Wednesday and Friday while suspended from duty.

This tribunal has long held that failure to comply with an order to cooperate at an official Department interview is grounds for termination. *See Disciplinary Case No. 2016-15216* (February 10, 2016) (Twenty-four year lieutenant is dismissed from the Department for failing to comply with an order on two separate dates to appear at an official Department interview). Respondent also failed to comply with mandated reporting requirements while under suspension. In sum, Respondent willfully failed to comply with lawful orders on multiple occasions and has demonstrated a flagrant disregard for the Department's rules and procedures. The profound impact of Respondent's transgressions on a quasi-military institution cannot be underestimated.

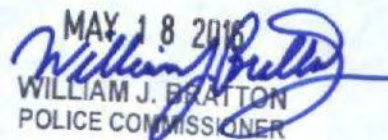
Accordingly, based on the totality of the unrefuted evidence and testimony presented at trial, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

MAY 18 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE MICHAEL MILICI
TAX REGISTRY NO. 896556
DISCIPLINARY CASE NO. 2016-15664

On his last three annual performance evaluations, Respondent twice received an overall rating of 4.5 "Extremely Competent/Highly Competent" and once received an overall rating of 5.0 "Extremely Competent." He has been awarded five medals for Excellent Police Duty and one Commendation. [REDACTED]

On March 31, 2016, Respondent was placed on Modified Duty. On April 25, 2016, Respondent was suspended from duty. Respondent remains under suspension. He has no prior formal disciplinary history.

Rosemarie Maldonado
Deputy Commissioner Trials